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6 **IN THE UNITED STATES DISTRICT COURT**

7 **FOR THE DISTRICT OF ARIZONA**

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9 Angel Osornio,

10 No. CV-19-08267-PCT-GMS

11 Plaintiff,

12 **ORDER**

13 v.

14 Commissioner of Social Security
15 Administration,

16 Defendant.

17 Before the Court is Defendant Commissioner of the Social Security
18 Administration’s (“Defendant”) Motion for Summary Judgment. (Doc. 51.) Also pending
19 are Plaintiff Angel Osornio’s (“Plaintiff”) Motion for Summary Judgment (Doc. 50) and
20 Demand to Grant Relief with Default Judgment Regarding Neglect from the Defendant of
21 Oppression, (Doc. 52), which the Court construes as a response to Defendant’s Motion for
22 Summary Judgment.

23 **BACKGROUND**

24 On February 28, 2019 an Administrative Law Judge issued a decision denying
25 Petitioner’s application for Social Security Disability Benefits. (Doc. 51-1 at 5.) Petitioner
26 subsequently requested review of the denial, and on April 18, 2019, the appeals Council
27 denied Petitioner’s request for review. *Id.* at 20, 24. The Appeals Council sent Petitioner
28 notice of its decision and of the right to commence a civil action within 60 days from the
 date of receipt of the notice. *Id.* at 21–22. The notice further explained that it assumed

1 Petitioner received the letter five days after the date it was mailed. *Id.* at 22. As the notice
2 is dated April 18, 2019, Petitioner’s deadline to commence a civil action was June 22, 2019.
3 Petitioner filed the instant action on September 16, 2019. (Doc. 1.)

4 On August 27, 2020 Defendant moved to dismiss Plaintiff’s complaint for failure to
5 state a claim. (Doc. 40.) The Court denied Defendant’s Motion but permitted Defendant to
6 file the instant Motion for Summary Judgment on the issue of whether Plaintiff’s appeal
7 was timely. (Docs. 43, 46.)

8 **I. Legal Standard**

9 The purpose of summary judgment is “to isolate and dispose of factually
10 unsupported claims.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 323–24 (1986). Summary
11 judgment is appropriate if the evidence, viewed in the light most favorable to the
12 nonmoving party, shows “that there is no genuine issue as to any material fact and that the
13 movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). Only disputes
14 over facts that might affect the outcome of the suit will preclude the entry of summary
15 judgment, and the disputed evidence must be “such that a reasonable jury could return a
16 verdict for the nonmoving party.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248
17 (1986).

18 “[A] party seeking summary judgment always bears the initial responsibility of
19 informing the district court of the basis for its motion and identifying those portions of [the
20 record] which it believes demonstrate the absence of a genuine issue of material fact.”
21 *Celotex*, 477 U.S. at 323. Parties opposing summary judgment are required to “cit[e] to
22 particular parts of materials in the record” establishing a genuine dispute or “show[] that
23 the materials cited do not establish the absence . . . of a genuine dispute.” Fed. R. Civ. P.
24 56(c)(1). A district court has no independent duty “to scour the record in search of a
25 genuine issue of triable fact[.]” *Keenan v. Allan*, 91 F.3d 1275, 1279 (9th Cir. 1996).

26 **II. Analysis**

27 Judicial review of a decision of the Commissioner of Social Security is governed by
28 Section 405(g) of the Social Security Act, which reads in relevant part:

1 Any individual, after any final decision of the Commissioner of Social
2 Security made after a hearing to which he was a party, irrespective of the
3 amount in controversy, may obtain a review of such decision by a civil action
4 commenced within sixty days after the mailing to him of notice of such
5 decision or within such further time as the Commissioner of Social Security
6 may allow. Such action shall be brought in the district court of the United
7 States for the judicial district in which the plaintiff resides, or has his
8 principal place of business. . . . The court shall have power to enter, upon the
9 pleadings and transcripts of the record, a judgment affirming, modifying, or
10 reversing the decision of the Commissioner of Social Security, with or
11 without remanding the cause for a rehearing.

12 42 U.S.C. § 405(g) (emphasis added). Except as provided by statute, “[n]o findings of fact
13 or decision of the Commissioner shall be reviewed by any person, tribunal, or
14 governmental agency.” 42 U.S.C. § 405(h). Subsections 405 (g) and (h) thus operate as a
15 statute of limitations establishing the time period in which a claimant may appeal a final
16 decision of the Commissioner. *Vernon v. Heckler*, 811 F.2d 1274, 1277 (1987).

17 Because § 404(g)’s time limit is a condition on the waiver of sovereign immunity,
18 it must be strictly construed. *Bowen v. City of New York*, 476 U.S. 467, 479 (1986). In rare
19 cases, however, the statute of limitations may be excused. *Id.* at 481. The 60-day limitations
20 period set forth in 42 U.S.C. § 405(g) may be extended by (1) the Commissioner of the
21 Social Security pursuant to 20 C.F.R. § 404.1482 and § 404.1411 or (2) the courts applying
22 equitable tolling principles “where the equities in favor of tolling the limitations period are
23 ‘so great that deference to the agency’s judgment is inappropriate.’” *Id.* at 480 (quoting
24 *Mathews v. Eldridge*, 424 U.S. 319, 330 (1976)); *Johnson v. Shalala*, 2 F.3d 918, 923 (9th
25 Cir. 1993).

26 Given the Appeals Council denied Petitioner’s request for review on April 18, 2019,
27 Plaintiff’s filing deadline was June 22, 2019. *See* (Doc. 51-1 at 20, 24) A letter from the
28 Appeals Counsel unambiguously warned Plaintiff of the 60-day deadline to file a civil
action. *Id.* at 21. Plaintiff filed her complaint on September 16, 2019.

29 In her Complaint, Plaintiff addressed the timeliness of her action. Presented in a
30 question and answer format, it reads:

1 An appeal from a decision of the Commissioner must be filed with 60 days
2 of the date on which you received notice that the Commissioner's decision
3 became final. When did you receive notice that the Commissioner's decision
4 was final?

5 I was given wrong information from Brad at the Flagstaff office who is a
6 disgrace to our military. I should have been given the proper information to
7 file at a federal court.

8 (Doc. 1 at 3.)

9 Claudia Gastelo, an Office Manager and Supervisor of Customer Service
10 Representatives in the Flagstaff, Arizona Social Security office avows that Plaintiff visited
11 their office many times. *See* (Doc. 51-2.) She met with Ms. Gastelo and Brad Potrikus on
12 one of these occasions. *Id.* Ms. Gastelo did not "recall any discussions between Ms.
13 Osornio and Brad Potrikus or [her]self about the period for filing a federal court appeal or
14 the specific process for filing." *Id.* at 3. Brad Potrikus also affirmed that he met with
15 Plaintiff only once, on May 10, 2019, and that he did not recall any detailed discussion
16 during the meeting "about the specific process for or deadlines involved in filing an appeal
17 in federal court." (Doc. 51-3 at 3.) Both Mr. Potrikus and Ms. Gastelo avowed that it would
18 not be their regular practice to assist claimants in filing federal court appeals, beyond
19 providing general information. (Docs. 51-2 at 3, 51-3 at 3.)

20 Neither Plaintiff's Motion for Summary Judgement, (Doc. 50), nor her Motion for
21 Default Judgment, (Doc. 52), articulates any legal grounds for her relief. As Plaintiff
22 articulates no factual basis for equitable tolling of the filing deadline, there is no genuine
23 issue of material fact as to the untimeliness of her complaint. Defendant's Motion for
24 Summary Judgment is thus granted. Plaintiff's other requests, for summary judgment and
25 default, do not articulate any basis for relief, and are thus denied.

26 CONCLUSION

27 For the reasons set forth above, Defendant's Motion for Summary Judgment is
28 granted. Moreover, as they articulate no basis for relief, both of Plaintiff's motions are
denied.

1 **IT IS THEREFORE ORDERED** that Defendant Commissioner of the Social
2 Security Administration's Motion for Summary Judgment. (Doc. 51) is **GRANTED**. The
3 Court directs the Clerk of the Court to dismiss the case against Defendant with prejudice.

4 **IT IS FURTHER ORDERED** that Plaintiff's Rule 56 Summary Judgment to Grant
5 Relief with Default Judgment (Doc. 50) is **DENIED**.

6 **IT IS FURTHER ORDERED** that Plaintiff's Rule 55 Demand to Grant Relief with
7 Default Judgment Regarding Neglect from the Defendant of Oppression (Doc. 52) is
8 **DENIED**.

9 Dated this 8th day of July, 2021.

10 
11 G. Murray Snow

12 Chief United States District Judge

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